

REMARKS

By the foregoing Amendment, the Related Applications section of the specification has been updated, Claim 20 has been amended, and Claims 26-29 have been cancelled. Favorable reconsideration of the application is respectfully requested.

The Examiner telephoned David G. Parkhurst on May 25, 2005, requiring an election of species between Group A, directed to Figs. 3a and 3b, and Group B, directed to Figs. 4a and 4b, with regard to Claims 20-29. Applicant elected Group A, directed to Figs. 3a and 3b, which read on Claims 20-25, and Applicant confirms the oral election. Claims 26-29 were withdrawn from consideration. Claims 26-29 have been cancelled, in accordance with the Examiner's requirement for election of species.

Claims 20-25 were rejected under the judicially created doctrine of obviousness-type double patenting in view of claims 1-7 of U.S. Patent Nos. 6,665,888 and 6,736,580. It is believed with the enclosed Terminal Disclaimer, the rejection on the grounds of obviousness-type double patenting can be withdrawn. A check covering the fee for the filing of the Terminal Disclaimer is enclosed.

Claims 26-29 were rejected under the judicially created doctrine of obviousness-type double patenting in view of claims 8-19 of U.S. Patent Nos. 6,665,888 and 6,736,580, and over claims 20-25 of co-pending application 11/080,025. Claims 26-29 have been cancelled in accordance with the Examiner's requirement for election of species.

Claims 20-25 were rejected under 35 U.S.C. 102(b) on the grounds of anticipation by Barlow, disclosing a screw with key-ways 28-30, which the Examiner designated as non-contact sections. Claim 20 recites "a plurality of non-contact sections," and has been amended to recite "each non-contact section being located between adjacent rounded lobes and substantially opposite one of the rounded lobes." At column 3, lines 49-53, Barlow discloses the engagement of the keys with the key-ways as follows: "... so that in use the beveled sections 14, 15 and 16 of the blade engage the arcuate walls 31, 32 and 33 of recess 27 in the head 24 of the blade fitting the key-ways 28, 29 and 30...." It is therefore respectfully submitted that the key-ways of Barlow are not non-contact sections, and that Barlow does not teach, disclose or suggest non-contact sections as claimed. The key-ways are also disclosed as having short flat outer sides intersecting at corners with curved sections 31-33. Claim 20 has been amended to recite "curved recesses located between the non-contact sections and the adjacent rounded lobes." It is therefore respectfully submitted that Claims 20-25 are novel and inventive over Barlow, and that the rejection of Claims 20-25 on the grounds of anticipation by Barlow should be withdrawn.

Claims 20-29 were rejected under 35 U.S.C. 102(b) on the grounds of anticipation by Barlow, although from the ensuing discussion of the applied reference, the Examiner referred to Ruzicka, so that this rejection is understood to be on the grounds of anticipation by Ruzicka. Claims 26-29 have been cancelled. If the Examiner intended to apply Barlow against Claims 20-25, Barlow was discussed above. Ruzicka was cited as disclosing in Fig. 12 a socket with a plurality of rounded inwardly directed lobes with

contact surfaces opposite a plurality of non-contact surfaces all equally spaced about a center. Claim 20 has been amended to recite "curved recesses located between the non-contact sections and the adjacent rounded lobes." Ruzicka Fig. 12 as applied fails to disclose curved recesses between the rounded lobes and the non-contact sections. It is further respectfully submitted that Claims 20-25 are novel and inventive over Ruzicka, and that the rejection of Claims 20-25 on the grounds of anticipation by Ruzicka should be withdrawn.

Furthermore, Claim 20 is directed to "A drive socket for a fastener which is driven by a key driver." The Examiner indicated that the recitation in the preamble that the claimed invention is a drive socket for a fastener which is driven by a key driver was not given patentable weight on the grounds that the body of the claims do not "breath life and meaning to the preamble." The Examiner's attention is directed to MPEP 2111.02, concerning the effect of the preamble, and discussing *Kropa v. Robie*, 187 F. 2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The preamble considered in *Kropa v. Robie* recited "An abrasive article" which was deemed essential to point out the invention defined by claims to an article comprising abrasive grains and a hardened binder. In *Kropa v. Robie* the court stated "it is only by that phrase that it can be known that the subject matter defined by the claims is comprised as an abrasive article." It is respectfully submitted that the preamble of Claim 20, reciting "A drive socket for a fastener which is driven by a key driver," is analogous to that of *Kropa v. Robie*, in that the preamble serves to define the structure of the claimed invention. It is therefore respectfully submitted that the

rejection of Claims 20-25 on the grounds of anticipation by Ruzicka should be withdrawn.

Claims 20-25 were rejected under 35 U.S.C. 103(a) on the grounds of obviousness from Allen in view of Anderson. Allen was cited as disclosing a fastener having a conventional hexagonal recess for receiving an Allen wrench. The Examiner acknowledged that Allen does not disclose a recess or rounded lobes. Anderson was cited as disclosing a fastener driver with inwardly directed lobes and opposing non-contact surfaces. However, from the discussion in Anderson at column 5, lines 1-23, the flat walls 28, 30, 32 opposing the protuberances 34a, 34b, 34c, are not non-contact surfaces. Referring to Figs. 5 and 6, Anderson teaches that "The effect of such construction is that the forces B' urge the driven end 38a against the diametrically opposing surfaces to eliminate any clearances 40 that may have been created due to the clearance fit dimensions." Anderson also discloses a fastener driver, while the present invention is directed to "A drive socket for a fastener which is driven by a key driver," so that Anderson is clearly inapposite. It is therefore respectfully submitted that Claims 20-25 are novel and inventive over Allen and Anderson, either taken individually or in combination, and that the rejection of Claims 20-25 on the grounds of obviousness from Allen in view of Anderson should be withdrawn.

Applicant has reviewed the additional prior art made of record and not relied upon, and it is believed that the additional prior art made of record and not relied upon is no more pertinent than the references actually applied.

In light of the foregoing amendments and remarks, it is respectfully submitted that the application should now be in condition for allowance, and an early favorable action in this regard is respectfully requested.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

By:

James W. Paul
Reg. No. 29,967

JWP/rvw

Encs.: Return Postcard

Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045
Telephone: (310) 824-5555
Facsimile: (310) 824-9696
Customer No. 24201
100691.1